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LOS ANGELES
SUPERIOR COURT

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HUB LAW OFFICES

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF LOS ANGELES

15 CHURCH OF SCIENOTOLOGY)
16 INTERNATIONAL, a California)
17 not-for-profit religious)
18 corporation;)

19 Plaintiffs,)

20 vs.)

21 GERALD ARMSTRONG; DOES 1)
22 through 25, inclusive,)

23 Defendants.)

24 AND RELATED CROSS-COMPLAINT)

No. BC 052395

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S DEMURRER TO
AMENDED ANSWER

DATE: November 30, 1992
TIME: 8:30 a.m.
DEPT: 30

NO TRIAL DATE
NO DISCOVERY CUT OFF
NO MOTION CUT OFF

COPY

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CHURCH OF SCIENTOLOGY
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through 25, inclusive,

Defendants.

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I. SCIENTOLOGY FAILS TO ABIDE BY LOCAL RULE ¶ 181

On or about August 26, 1992 Scientology moved to strike substantial portions of defendants' Answer, including pages of factual allegations in support thereof. That first attack on the pleading did not include a demurrer. Now, after defendants have amended their Answer, Scientology brings this Demurrer. At first Scientology objected to Armstrong's Answer because it contained too many facts, and now it complains there are not enough. By taking opposite positions regarding the sufficiency of facts pleaded in the answer Scientology demonstrates why this Court has a rule requiring demurrers and motions to strike to be filed

1 together. Should the Court grant the demurrer, not only would
2 defendants have to amend their answer a needless second time, but
3 Scientology would be rewarded with its rule violation with one of
4 its litigation goals: to confuse courts and confound the orderly
administration of justice.

5 Local Rule ¶ 181 states "[w]henver there are grounds for
6 both a demurrer and a motion to strike, both must be served and
7 filed at the same time and calendared for the same date." Accord:
8 Weil and Brown, Civil Procedure Before Trial (1991 Rutter Group),
§ 7:163 at 7-42.1.

9 A quick review of defendants' original answer and amended
10 answer shows that the defenses alleged in both pleadings are
11 essentially identical. At the time that Scientology first
12 attacked the answer by its motion to strike, it knew or should
13 have known that it would demur. Instead of abiding by the Local
14 Rule 181, however, Scientology is proceeding to litigate in the
15 piecemeal, successive manner that the Rule was designed to
16 prevent. Since Scientology failed to comply with Local Rule ¶ 181
by not bringing the instant Demurrer in conjunction with its
first-filed Motion to Strike, its right to demur was eliminated.

16 II. THE DEMURRER FAILS ON THE MERITS

17 Assuming without conceding that the Court will proceed to the
18 merits of the improperly brought demurrer, the grounds asserted
19 disregard the facts which have been pleaded and the law applicable
thereto.

20 A. Defense Of Illegality

21 Armstrong's fifth affirmative defense is based upon the
22 contract being illegal. In support thereof, Armstrong has pleaded
that

23 (1) He was one of more than 2 dozen people who were
24 represented by Michael J. Flynn, who pressured many of them in the
25 December 1986 "global settlement" into signing false affidavits
and secret agreements with Scientology which were designed to
26
27
28

1 further its notorious Fair Game Policy ¹/ by suppressing evidence
2 and obstructing justice to prevent its victims from obtaining
3 civil or criminal redress. (AA at 5:15-28; 21:1-14, 24:19-25:24,
29:4-9);

4 (2) The agreement's goals included a collusive reversal of
5 Judge Breckenridge's decision in Church of Scientology of
6 California v. Armstrong, LASC No. C 420153 ("Armstrong I") either
7 by stipulation or by causing Armstrong to take a dive on appeal
8 (AA at 24:19-25), and, by obtaining possession of the so-called
9 MCCS tapes, the cover-up of Scientology's misconduct in employing
attorneys for the purpose of committing future crimes and frauds; ²/

10 ¹ Said Fair Game Policy states that any enemy of
11 Scientology "[m]ay be deprived of property or injured by any
12 means by any Scientologist without any discipline of the
Scientologist. May be tricked, sued or lied to or destroyed."
(Amended Answer ["AA"] at 25:1-6)

13 ² The MCCS Project gave rise to substantial litigation
14 regarding the crime-fraud exception to the attorney-client
15 privilege. In United States v. Zolin (1989) 109 S.Ct. 2619, the
16 Court addressed whether the attorney-client privilege between
17 Scientology and some of its attorneys should be abrogated on the
18 basis "that the legal service was sought or obtained in order to
19 enable or aid the client to commit or plan to commit a crime or
20 tort." Id. at 2630. In Zolin, the Supreme Court reversed the
21 Ninth Circuit's ruling in United States v. Zolin (9th Cir. 1987)
22 809 F.2d 1411 that the Government had not made a sufficient
showing that there had been "illegal advice ... given by
[Scientology] attorneys to [Scientology] officials" to invoke the
crime-fraud exception to the attorney-client privilege. Upon
reversing and remanding, the Supreme Court ordered the Ninth
Circuit to review partial transcripts of the tape recording
sought by the IRS in a criminal investigation of Scientology to
determine whether the crime-fraud exception to the privilege
applied. On remand, the Court held:

23 "The partial transcripts demonstrate that the purpose of
24 the [Mission Corporate Category Sort Out] project was to
25 cover up past criminal wrongdoing. The MCCS project involved
26 the discussion and planning for future frauds against the
27 IRS, in violation of 18 U.S.C. § 371. [citation.] The
figures involved in MCCS admit on the tapes that they are
attempting to confuse and defraud the U.S. Government. The
purpose of the crime-fraud exception is to exclude such
transactions from the protection of the attorney-client
privilege."

(continued...)

1 (3) In order to accomplish the foregoing Scientology and
2 Flynn entered into at least two separate secret agreements. In
3 one Flynn promised not to engage in any further litigation adverse
4 to Scientology. Then another secret agreement was for
5 indemnification regarding the resolution of the retrial of
6 Armstrong I were plaintiff and other Scientology-related entities
7 successful in obtaining reversal of Judge Breckenridge's decision
8 on appeal. Scientology promised to limit its collections of
9 damages to \$25,001.00 and to indemnify Flynn for the payment
10 thereof and Flynn, in turn, would indemnify Armstrong for any such
11 judgment. The existence of these secret, side agreements were
12 never disclosed to Armstrong by Flynn, plaintiff, or other
13 Scientology-related entities. (AA at 21:15-27)

14 (4) Flynn was coerced by Scientology into acting as
15 Scientology's agent because of Scientology's practice of Fair Game
16 on him. (AA at 28:19-27) ³/

17 As discussed above, the Scientology Organization set out to
18 engineer the reversal of Judge Breckenridge's written decision in
19 Armstrong I. Paragraphs 4A and 4B of the December 6, 1986
20 agreement exempt from the settlement's scope the resolution of
21 Scientology's appeal (No. B005912) from the Breckenridge Decision.
22 In consideration for Scientology's payment of money, Armstrong was
23 to "waive" his rights to fight its appeal. Thus, the Scientology
24 Organization purchased Armstrong's default in Appeal No. B005912.
25 At that point, the litigation of the appeal became collusive by
26 compliance with the terms set forth in ¶¶ 4A and 4B of the
27 settlement agreement, and because Armstrong's lawyers had entered
28 into contracts not to respond to the appeal or defend Armstrong.

The consideration of a contract must be lawful. Civil Code

²(...continued)

United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. cert. denied, Church of Scientology v. United States (1991) 111 S.Ct. 1309.

³ For details, see United States v. Kattar (1st Cir.1988) 840 F.2d 118, 125 (detailing some of Scientology's Fair Game activities against Michael Flynn)

1 section 1607. If any part of the consideration is unlawful the
2 entire contract is void. Civil Code section 1608. Consideration
3 is unlawful if it is contrary to an express provision of law,
4 contrary to the policy of express law, though not expressly
5 prohibited, or otherwise contrary to good morals. Civil Code
6 section 1667. The object of the contract is the thing which it is
7 agreed, on the party receiving the consideration, to do or not to
8 do. Civil Code section 1595. The object must be lawful when the
9 contract is made. Civil Code section 1596. Whether or not a
10 contract in a given case is contrary to public policy is a
11 question of law to be determined from the circumstances of each
12 particular case. Bovard v. American Horse Enterprises (1988) 201
13 Cal.App.3d 832, 838, 247 CR 340; Kallen v. Delug (1984) 157
14 Cal.App.3d 940, 951, 203 CR 879; Russell v. Solderinger (1976) 59
15 Cal.App.3d 633, 642, 131 CR 145.

16 It is a fundamental rule of construction of contracts that
17 all applicable laws in existence when an agreement is made, which
18 laws the parties are presumed to know and have in mind,
19 necessarily enter into the contract and form a part of it without
20 any stipulation to that effect, as if they were expressly referred
21 to and incorporated in the agreement. People v. Hadley (1967) 257
22 Cal.App.2d Supp. 871, 881.

23 "Agreements to suppress evidence have long been held void as
24 against public policy, both in California and in most common law
25 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
26 829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the
27 California Court of Appeal adopted section 557 of the Restatement
28 of the Law of Contracts prohibiting as illegal those agreements
which sought to suppress the disclosure of discreditable facts.
The court stated:

A bargain that has for its consideration the nondisclosure of
discreditable facts . . . is illegal. . . In many cases
falling within the rule stated in the section is that the
bargain is illegal whether or not the threats go so far as to
bring the case within the definition of duress. In some
cases, moreover, disclosure may be proper or even a duty, and
the offer to pay for nondisclosure may be voluntarily made.
Nevertheless the bargain is illegal. Moreover, even though
the offer to pay for nondisclosure is voluntarily made and
though there is not a duty to make disclosure or propriety in

1 doing so, a bargain to pay for nondisclosure is illegal.
2 [Emphasis added.]

3 Brown 28 Cal.App.2d at 618.

4 The nondisclosure was not a minor or indirect part of
5 the contract, but a major and substantial consideration
6 of the agreement. A bargain which includes as part of
7 its consideration nondisclosure of discreditable facts
8 is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618
9 [83 P.2d 82].) It has long been hornbook law that
10 consideration which is void for illegality is no
11 consideration at all. [Citation.]

12 Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 166, 125
13 Cal.Rptr. 31

14 The object of a contract must be lawful. Civil Code sections
15 1550, 1596. If the contract has a single object, and that object
16 is unlawful, the entire contract is void. Civil Code section
17 1598.

18 Civil Code § 1668 states:

19 All contracts which have for their object, directly or
20 indirectly, to exempt anyone from responsibility for his
21 own fraud, or willful injury to the person or property
22 of another, or violation of law, whether willful or
23 negligent, are against the policy of the law.

24 Since an agreement to suppress evidence or to conceal a
25 witness is illegal, Witkin, § 611 at 550. Penal Code §§ 136,
26 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d
27 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80
28 Cal. 570, 571-572, and the combined effect of the "global
settlement" has been to remove the availability as witnesses of
most former high-ranking Scientologists, such can "lead to subtle
but deliberate attempts to suppress relevant evidence."

Williamson, 21 Cal.3d at 838.

Finally, the elimination of the independence of Armstrong's
counsel and turning said counsel's advocacy in Scientology's favor
eliminated Armstrong's bargaining power. Said agreements are
standardized inasmuch as they have been employed in approximately
30 different instances in order to bury the fruits of discovery in
civil litigation. (AA at 21:11-14, 29:4-9)

B. Defense Of Fraud And Deceit

Armstrong has satisfactorily pleaded his sixth affirmative

1 defense of fraud and deceit by pleading the elements of fraud,
2 inter alia, as follows:

3 Plaintiff is barred from bringing this action against
4 these defendants, and each of them, because of its fraud
5 and deceit in representing to defendants, and each of
6 them, that its management had changed and no longer
7 would engage in illegal activities, that it wanted to
8 buy peace, that it would leave defendants, and each of
9 them alone, and that the false affidavit that it
10 required Armstrong to sign as a condition of the
11 settlement would be disclosed only if Armstrong attacked
12 the ORG. Plaintiff made the foregoing representations
13 to defendants, and each of them, with knowledge of the
14 falsity thereof at the time said representations were
15 made and with the intent to deceive defendants, and each
16 of them, who actually and justifiably relied on those
17 material misrepresentations to their injury by signing
18 the settlement agreement. In fact, plaintiff and other
19 Scientology-related organizations, entities and
20 individuals never intended to cease their illegal and
21 immoral activities, never intended to buy peace with
22 defendants, and each of them, never intended to leave
23 Armstrong alone, never intended not to use the false
24 declaration only if Armstrong attacked the ORG, and
25 never intended to abide by the terms of the settlement
26 agreement. Rather plaintiff and other Scientology-
27 related entities intended to use the settlement
28 agreement as a tool for the implementation of the Fair
Game Policy and Scientology's litigation tactics so as
to engineer a reversal of Judge Breckenridge's decision
in Armstrong I, to collusively resolve any re-trial of
Armstrong I, to obtain possession of the so-called MCCS
tapes which were evidence of Scientology employing
attorneys for the purpose of committing future crimes
and frauds, to use the false declaration in other
litigation without regard to Armstrong's conduct, and to
otherwise obstruct justice and suppress evidence of
facts which discredited plaintiff and other Scientology-
related entities.

(AA at 23:27-25:1)

22 Since consent to a contract must be free, Civil Code § 1565 (1),
23 apparent consent obtained by fraud is not. Civil Code § 1567 (3).
24 Thus, Armstrong has pleaded an effective defense. Since Flynn
25 represented to Armstrong that the provisions he found onerous and
26 which Scientology herein seeks to enforce were not enforceable (AA
27 at 3:3-23; 6:17-20; 27:27-5; 28:16-22), "Armstrong was deceived as
28 to the nature of his act" and the contract "may be disregarded
without the necessity of rescission." 1 Witkin, Summary of
California Law, Contracts (9th Ed. 1987), § 405, at 364 and cases

1 cited therein.

2 **C. Defenses Of Laches, Unclean Hands And Estoppel**

3 Scientology contends that because it has obtained equitable
4 relief in the form of a preliminary injunction in this case, that
5 the equitable defenses of unclean hands (third affirmative
6 defense), estoppel (seventh) and laches (thirteen) "are not
7 appropriate defenses to a breach of contract claim when equitable
8 relief has already been reviewed and granted by the court."
9 (Demurrer at 4:4-8) This silly claim should be disregarded as it
10 is supported neither by judicial or legislative authority nor
11 common sense. Whether Scientology's preliminary injunction will
12 become permanent is still to be litigated. Indeed, the Sohigian
13 ruling granted a preliminary injunction only on the narrow aspect
14 of un-subpoenaed assistance to adverse litigants. It specifically
15 does not enjoin defendant from any of the other acts barred by the
16 settlement agreement which Scientology is trying to have this
17 Court enforce.

18 Moreover, all of the allegations pleaded in connection with
19 the defenses of illegality and fraud are incorporated in the third
20 affirmative defense of unclean hands. (AA at 19:20-27)

21 Armstrong has pleaded further facts regarding the seventh
22 affirmative defense of estoppel inasmuch as Scientology has
23 repeatedly violated the provision of the settlement agreement that
24 it seeks to enforce. (AA at 9:3-8; 11:6-10; 26:14-26) The same
25 facts support the eighth affirmative defense of waiver. (AA at
26 27:6-16)

27 **D. Armstrong's Mistake Defenses Are Adequately Pleaded**

28 In his ninth affirmative defense Armstrong asserts a mistake
of law. A mistake of law constitutes a mistake when it arises
from a "misapprehension of the law by one party, of which the
others are not aware at the time of contracting, but they do not
rectify." Civil Code section 1578 (2) In support of this defense
Armstrong has asserted, inter alia, that Scientology compromised
his attorney who advised him that the provisions of the agreement
seeking to silence him regarding all matters relating to
Scientology were unenforceable. (AA at 3:3-23; 6:17-20; 27:27-5;
28:16-22) Since Scientology had compromised Flynn, he was acting

1 as Scientology's agent. Scientology was apparently aware that
2 "[a] person is entitled to contract away or to waive his
3 constitutional rights" guaranteed by the First Amendment.
4 (Demurrer at 4:24-25) Since Scientology set up Armstrong's
5 misapprehension and took advantage thereof, 1 Witkin, Summary of
6 California Law, Contracts (9th Ed. 1987), § 379, at 345 and cases
7 cited therein, he may set up the defense of mistake of law.
8 Moreover, an attorney's misstatement of the law will set up a good
9 defense of mistake of law. Estate of Peterson (1968) 259
10 Cal.App.2d 492, 500-01, 66 CR 629. The same facts which support
11 the mistake of law defense also support the tenth affirmative
12 defense of mistake of fact. Civil Code section 1577 (2).

13 **E. Twelfth Affirmative Defense of Undue Influence**

14 Armstrong's twelfth affirmative defense is undue influence
15 which vitiates free consent. Civil Code § 1567 (4). Undue
16 influence consists of taking undue and grossly oppressive and
17 unfair advantage of another's necessities or distress. Civil Code
18 § 1575 (3). In support of this defense and in addition to the
19 other facts he previously set forth and incorporated, Armstrong
20 alleged:

21 Plaintiff is barred from bringing this action against
22 these defendants, and each of them, because plaintiff
23 and other Scientology-related organizations, entities
24 and individuals had implemented Fair Game Policy
25 stratagems on defendant Armstrong's attorney, Michael J.
26 Flynn and upon other anti-Scientology litigants and
27 would continue such conduct against all such persons
28 unless all said anti-Scientology litigants, including
Flynn, signed settlement agreements substantially
similar to that signed by defendant Armstrong.

(AA at 29:18-27)

For judicial recognition of Fair Game Policy, see, Allard v.
Church of Scientology of California (1976) 58 Cal.App.3d 439, 443,
fn. 1; Church of Scientology of California v. Armstrong (1991) 232
Cal.App.3d 1060, 1067 [defendant herein subjected to Fair Game
Policy]; Wollersheim v. Scientology (1989) 212 Cal.App.3d 872,
880, 888, pet. for cert. granted, vacated and remanded on other

1 grounds, 111 S.Ct. 1298 (1991) ⁴/

2 For Scientology to have subjected Armstrong and his attorney
3 to the Fair Game policy, and then to have compromised his attorney
4 with large sums of money to act against the interests of his own
5 client takes grossly oppressive and unfair advantage of the very
6 distress which, in the first place, Scientology created.

7 Further,

8 in early December 1986, attorney Flynn and other anti-
9 Scientology litigants, postured Armstrong as a deal
10 breaker, by stating that their desires to settle would
11 be ruined unless defendant Armstrong agreed to settle
12 and led him to believe if he did not sign the agreement,
13 they would not cooperate in such event by acting as
14 Armstrong's witnesses and zealous advocate on the trial
15 of his cross-complaint against Scientology set to
16 commence shortly thereafter in Armstrong I.

17 (AA at 29:28-30:14)

18 Armstrong has alleged sufficient facts to support the
19 affirmative defense of undue influence.

20 **F. The Constitutional Defenses Are Meritorious**

21 It is without question that the enforcement of the settlement
22 agreement implicates Armstrong's First Amendment rights to
23 religion, speech, press and association and Ninth Amendment right
24 to privacy. Since the purpose of the agreement is the suppression
25 of evidence regarding Scientology's criminal and civil wrongdoing,
26 litigants adverse to Scientology are deprived of their due process
27 right to a fair trial (thirty-ninth affirmative defense). This in
28 turn is a violation of equal protection (fortieth affirmative
defense) because it creates two classes of litigants based on
wealth. Those litigants who can afford to take depositions and
pay legal fees to litigate through Scientology's obstructive
motions for protective orders and instructions not to answer
questions then requiring motions to compel will obtain the

⁴ See also United States v. Kattar (1st Cir.1988) 840
F.2d 118, 125 (detailing some of Scientology's Fair Game
activities against Michael Flynn); Van Schaick v. Church of
Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4;
Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203,
644 P.2d 577, 590-92; Church of Scientology v. Commissioner of
Internal Revenue (1984) 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310
(9th Cir. 1987).

1 evidence needed to support their claims against Scientology. All
2 others unable to pay such expenses will be deprived of such
3 evidence and not receive fair trials. Since Scientology commonly
4 leaves its victims impoverished, few, if any, can battle it
5 legally. Such tactics, of which the settlement agreement at issue
6 is an integral part, also adversely impact the right to counsel of
7 Scientology's victims (forty-first affirmative defense) because
8 most lawyers are not willing to fight in Scientology-style
9 litigation where they have to pay dearly in order to obtain
10 evidence, and where they must begin against the behemoth on a
11 wildly tilted playing field.

12 Since enforcement of the settlement agreement would deprive
13 Armstrong of the right to associate with persons and organizations
14 dedicated to exposing Scientology for the criminal organization
15 that it is now and has always been, it violates his right to free
16 speech (twenty-sixth affirmative defense), free association
17 (twenty-eighth affirmative defense) and press (twenty-seventh
18 affirmative defense).

19 The United States Supreme Court has stated that "Prior
20 restraints on speech and publication are the least tolerable
21 infringement on First Amendment rights." Nebraska Press
22 Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "The loss
23 of First Amendment freedoms, for even minimal periods of time,
24 unquestionably constitutes irreparable injury." Elrod v. Burns
25 (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547; C.B.S., Inc. v. U.S.
26 District Court (9th Cir. 1984) 729 F.2d 1174, 1177. "Under our
27 constitutional system prior restraints, if permissible at all, are
28 permissible only in the most extraordinary of circumstances." Id.,
729 F.2d at 1183. Therefore, prior restraint on expression comes
with a "heavy presumption" against constitutional validity.
Organization For A Better Austin v. Keefe (1971) 402 U.S. 415,
419.

Even where individuals have entered into express agreements
not to disclose certain information, either by consent
agreement [citation]; or by an employment contract and
secrecy oath [citation], the courts have held that judicial
orders enforcing such agreements are prior restraints
implicating First Amendment rights.

1 In Re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

2 The First Amendment values at issue are not limited to
3 Armstrong. They include the American public as well.

4 The freedom of speech and of the press, which are secured by
5 the First Amendment against abridgment by the United States,
6 are among the personal rights and liberties which are secured
7 to all persons by the Fourteenth Amendment by a state. [¶]
8 The safeguarding of these rights to the ends that men may
9 speak as they think on matters vital to them and that
10 falsehoods may be exposed through the process of education
11 and discussion is essential to free government. Those who
12 won our independence had confidence in the power of free and
13 fearless reasoning and communication of ideas to discover and
14 spread political and economic truth. Noxious doctrines in
15 those fields may be refuted and their evil averted by the
16 courageous exercise of the right of free discussion.
17 Abridgment of freedom of speech and of the press, however,
18 impairs those opportunities for public education that are
19 essential to the power of correcting error through the
20 processes of popular government. (Emphasis added.)

21 Thornhill v. State of Alabama (1940) 310 U.S. 88, 95.

22 The goal of the First Amendment is "producing an informed
23 public capable of conducting its own affairs." Red Lion
24 Broadcasting v. F.C.C. (1969) 395 U.S. 367, 392. Thus, "The
25 protection of the public requires not merely discussion, but
26 information." New York Times v. Sullivan (1964) 376 U.S. 254,
27 272. The mark at which the First Amendment aims is "the widest
28 possible dissemination of information from diverse and
antagonistic sources." Associated Press v. United States 326 U.S.
1, 20.

[A]bove all else, the First Amendment means that government
has no power to restrict expression because of its message,
its ideas, or its content. [Citations.] To permit the
continued building of our politics and culture, and to assure
self-fulfillment for each individual, our people are
guaranteed the right to express any thought, free from
government censorship. The essence of this forbidden
censorship is content control. Any restriction of expressive
activity because of its content would completely undercut the
'profound national commitment to the principle that debate on
public issues should be uninhibited, robust and wide-open.

29 Police Department v. Mosley (1972) 408 U.S. 92, 96.

30 Since communication is essential to thinking and nothing is
31 more private than the machinations of one's mind, Armstrong's
32 right to privacy is implicated by the agreement restrictions as

1 well.

2 Scientology's argues that "[e]ven if there were facts alleged
3 which showed the agreement here removed the constitutional rights
4 of defendant, the existence of such facts does not give rise to a
5 defense of breach of contract. A person is entitled to contract
6 away or to waive his constitutional rights." (Demurrer at 4:21-
7 25) This argument should be made to a jury. Armstrong has
8 alleged sufficient facts that fraud, undue influence and mistake
9 vitiated the consent required to form a valid contract in order to
10 raise the issue whether, assuming without conceding that First
11 Amendment rights can be waived in perpetuity, there was an
12 intentional relinquishment of a known right. Johnson v. Zerbst
13 (1938) 304 U.S. 458.

14 **G. Armstrong's Contractual Defenses Are Meritorious**

15 The elimination of the independence of Armstrong's counsel
16 and turning said counsel's advocacy in Scientology's favor
17 eliminated Armstrong's bargaining power. Said agreements are
18 standardized inasmuch as they have been employed in approximately
19 30 different instances in order to bury the fruits of discovery in
20 civil litigation. (AA at 21:11-14, 29:4-9)

21 The facts that have been alleged, read liberally as a whole,
22 allege facts sufficient to support all of Armstrong's defenses,
23 C.C.P. § 452, including but not limited to frustration of purpose,
24 lack of mutuality, impossibility of performance, lack of
25 consideration, unconscionability, hardship, unreasonableness, and
26 failure of consideration.

27 **III. LEAVE TO AMEND IS REQUESTED**

28 In the event that the Court sustains plaintiff's demurrer to
any part of defendants' answer, plaintiff requests leave to amend
his amended answer of any part thereof to allege facts sufficient
to support such affirmative defense. ⁵/

⁵ For example, Armstrong recognizes that no facts have
been pleaded to support his affirmative defenses of res judicata
and collateral estoppel. Such facts would be based on
Scientology's failed effort to enforce the settlement agreement
here in Armstrong I and are readily ascertainable. Moreover, as
this was an issue during the course of the preliminary injunction
hearing, Scientology knows the basis for the defenses.

1 **IV. CONCLUSION**

2 Based upon the foregoing points, and the authorities cited in
3 support thereof, Armstrong respectfully submits that Scientology's
4 demurrer should be denied.

5
6 DATED: November 18, 1992

7
8 By: 

FORD GREENE and PAUL MORANTZ
Attorneys for Defendant
GERALD ARMSTRONG and THE
GERALD ARMSTRONG CORPORATION

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANTS' OPPOSITION TO PLAINTIFF'S DEMURRER TO AMENDED COMPLAINT on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Also By Fax

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
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Also By Fax

☒ (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

☐ (Personal) I caused said papers to be personally service on the office of opposing counsel.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 19, 1992

